

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**TAMARA RAE HARRY, aka
TAMARA RAE WAGEMAN**

Registered Nurse License No. 414985

Respondent

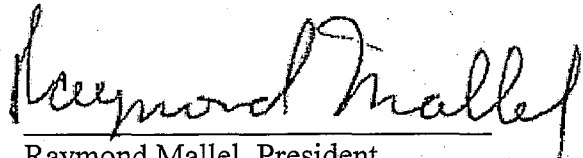
Case No. 2012-154
OAH No. 2011090500

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 10, 2012.**

IT IS SO ORDERED **August 10, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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2 LINDA K. SCHNEIDER
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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-154

12 **TAMARA RAE HARRY**
13 **aka TAMARA RAE WAGEMAN**
14 **837 Sunset Drive**
Vista, CA 92081

OAH No. 2011090500

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Registered Nurse License No. 414985**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
22 Registered Nursing. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds,
24 Senior Legal Analyst.

25 2. Respondent Tamara Rae Harry (Respondent) is representing herself in this
26 proceeding and has chosen not to exercise her right to be represented by counsel.

27 3. On or about August 31, 1987, the Board of Registered Nursing issued Registered
28 Nurse License No. 414985 to Tamara Rae Harry, also known as Tamara Rae Wageman

1 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
2 the charges brought in Accusation No. 2012-154 and will expire on February 28, 2013, unless
3 renewed.

4 JURISDICTION

5 4. Accusation No. 2012-154 was filed before the Board of Registered Nursing (Board),
6 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
7 and all other statutorily required documents were properly served on Respondent on September 9,
8 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of
9 Accusation No. 2012-154 is attached as Exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 2012-154. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 her own expense; the right to confront and cross-examine the witnesses against her; the right to
17 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
18 compel the attendance of witnesses and the production of documents; the right to reconsideration
19 and court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 2012-154.

26 9. Respondent agrees that her Registered Nurse License is subject to discipline and she
27 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 414985 issued to Respondent Tamara Rae Harry, also known as Tamara Rae Wageman (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1 **Severability Clause.** Each condition of probation contained herein is a separate and
2 distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
7 detailed account of any and all violations of law shall be reported by Respondent to the Board in
8 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
9 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
10 45 days of the effective date of the decision, unless previously submitted as part of the licensure
11 application process.

12 **Criminal Court Orders:** If Respondent is under criminal court orders, including
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
16 the conditions of the Probation Program established by the Board and cooperate with
17 representatives of the Board in its monitoring and investigation of the Respondent's compliance
18 with the Board's Probation Program. Respondent shall inform the Board in writing within no
19 more than 15 days of any address change and shall at all times maintain an active, current license
20 status with the Board, including during any period of suspension.

21 Upon successful completion of probation, Respondent's license shall be fully restored.

22 3. **Report in Person.** Respondent, during the period of probation, shall appear in
23 person at interviews/meetings as directed by the Board or its designated representatives.

24 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
25 practice as a registered nurse outside of California shall not apply toward a reduction of this
26 probation time period. Respondent's probation is tolled, if and when she resides outside of
27 California. Respondent must provide written notice to the Board within 15 days of any change of
28 residency or practice outside the state, and within 30 days prior to re-establishing residency or

1 returning to practice in this state.

2 Respondent shall provide a list of all states and territories where she has ever been licensed
3 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
4 information regarding the status of each license and any changes in such license status during the
5 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
6 license during the term of probation.

7 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
8 or cause to be submitted such written reports/declarations and verification of actions under
9 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
10 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
11 Respondent shall immediately execute all release of information forms as may be required by the
12 Board or its representatives.

13 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
14 state and territory in which she has a registered nurse license.

15 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
16 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
17 6 consecutive months or as determined by the Board.

18 For purposes of compliance with the section, "engage in the practice of registered nursing"
19 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
20 non-direct patient care position that requires licensure as a registered nurse.

21 The Board may require that advanced practice nurses engage in advanced practice nursing
22 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

23 If Respondent has not complied with this condition during the probationary term, and
24 Respondent has presented sufficient documentation of her good faith efforts to comply with this
25 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
26 extension of Respondent's probation period up to one year without further hearing in order to
27 comply with this condition. During the one year extension, all original conditions of probation
28 shall apply.

1 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
2 prior approval from the Board before commencing or continuing any employment, paid or
3 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to her employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within seventy-two
9 (72) hours after she obtains any nursing or other health care related employment. Respondent
10 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
11 separated, regardless of cause, from any nursing, or other health care related employment with a
12 full explanation of the circumstances surrounding the termination or separation.

13 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
14 Respondent's level of supervision and/or collaboration before commencing or continuing any
15 employment as a registered nurse, or education and training that includes patient care.

16 Respondent shall practice only under the direct supervision of a registered nurse in good
17 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
18 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
19 approved.

20 Respondent's level of supervision and/or collaboration may include, but is not limited to the
21 following:

22 (a) Maximum - The individual providing supervision and/or collaboration is present in
23 the patient care area or in any other work setting at all times.

24 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
25 care unit or in any other work setting at least half the hours Respondent works.

26 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
27 person communication with Respondent at least twice during each shift worked.

28 ///

1 (d) Home Health Care - If Respondent is approved to work in the home health care
2 setting, the individual providing supervision and/or collaboration shall have person-to-person
3 communication with Respondent as required by the Board each work day. Respondent shall
4 maintain telephone or other telecommunication contact with the individual providing supervision
5 and/or collaboration as required by the Board during each work day. The individual providing
6 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
7 patients' homes visited by Respondent with or without Respondent present.

8 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
9 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
10 or for an in-house nursing pool.

11 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
12 registered nursing supervision and other protections for home visits have been approved by the
13 Board. Respondent shall not work in any other registered nursing occupation where home visits
14 are required.

15 Respondent shall not work in any health care setting as a supervisor of registered nurses.
16 The Board may additionally restrict Respondent from supervising licensed vocational nurses
17 and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of nursing or as an
19 instructor in a Board approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
23 request documentation to determine whether there should be restrictions on the hours of work.

24 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
25 successfully complete a course(s) relevant to the practice of registered nursing no later than six
26 months prior to the end of her probationary term.

27 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
28 Respondent shall submit to the Board the original transcripts or certificates of completion for the

1 above required course(s). The Board shall return the original documents to Respondent after
2 photocopying them for its records.

3 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
4 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
5 amount of \$852.50. Respondent shall be permitted to pay these costs in a payment plan approved
6 by the Board, with payments to be completed no later than three months prior to the end of the
7 probation term.

8 If Respondent has not complied with this condition during the probationary term, and
9 Respondent has presented sufficient documentation of her good faith efforts to comply with this
10 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
11 extension of Respondent's probation period up to one year without further hearing in order to
12 comply with this condition. During the one year extension, all original conditions of probation
13 will apply.

14 **12. Violation of Probation.** If Respondent violates the conditions of her probation, the
15 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
16 and impose the stayed discipline (revocation/suspension) of Respondent's license.

17 If during the period of probation, an accusation or petition to revoke probation has been
18 filed against Respondent's license or the Attorney General's Office has been requested to prepare
19 an accusation or petition to revoke probation against Respondent's license, the probationary
20 period shall automatically be extended and shall not expire until the accusation or petition has
21 been acted upon by the Board.

22 **13. License Surrender.** During Respondent's term of probation, if she ceases practicing
23 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
24 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
25 Respondent's request and to exercise its discretion whether to grant the request, or to take any
26 other action deemed appropriate and reasonable under the circumstances, without further hearing.
27 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
28 subject to the conditions of probation.

1 Surrender of Respondent's license shall be considered a disciplinary action and shall
2 become a part of Respondent's license history with the Board. A registered nurse whose license
3 has been surrendered may petition the Board for reinstatement no sooner than the following
4 minimum periods from the effective date of the disciplinary decision:

5 (1) Two years for reinstatement of a license that was surrendered for any reason other
6 than a mental or physical illness; or

7 (2) One year for a license surrendered for a mental or physical illness.

8 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
9 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
10 assistant, who is approved by the Board before the assessment is performed, submit an
11 assessment of the Respondent's physical condition and capability to perform the duties of a
12 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
13 medically determined, a recommended treatment program will be instituted and followed by the
14 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
15 to the Board on forms provided by the Board.

16 If Respondent is determined to be unable to practice safely as a registered nurse, the
17 licensed physician, nurse practitioner, or physician assistant making this determination shall
18 immediately notify the Board and Respondent by telephone, and the Board shall request that the
19 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
20 immediately cease practice and shall not resume practice until notified by the Board. During this
21 period of suspension, Respondent shall not engage in any practice for which a license issued by
22 the Board is required until the Board has notified Respondent that a medical determination
23 permits Respondent to resume practice. This period of suspension will not apply to the reduction
24 of this probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within the 45-day
26 requirement, Respondent shall immediately cease practice and shall not resume practice until
27 notified by the Board. This period of suspension will not apply to the reduction of this
28 probationary time period. The Board may waive or postpone this suspension only if significant,

1 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
2 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
3 Only one such waiver or extension may be permitted.

4 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

5 Respondent, at her expense, shall successfully complete during the probationary period or shall
6 have successfully completed prior to commencement of probation a Board-approved
7 treatment/rehabilitation program of at least six months duration. As required, reports shall be
8 submitted by the program on forms provided by the Board. If Respondent has not completed a
9 Board-approved treatment/rehabilitation program prior to commencement of probation,
10 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
11 If a program is not successfully completed within the first nine months of probation, the Board
12 shall consider Respondent in violation of probation.

13 Based on Board recommendation, each week Respondent shall be required to attend at least
14 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
15 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
16 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
17 added. Respondent shall submit dated and signed documentation confirming such attendance to
18 the Board during the entire period of probation. Respondent shall continue with the recovery plan
19 recommended by the treatment/rehabilitation program or a licensed mental health examiner
20 and/or other ongoing recovery groups.

21 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
22 completely abstain from the possession, injection or consumption by any route of all controlled
23 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
24 are ordered by a health care professional legally authorized to do so as part of documented
25 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
26 days, by the prescribing health professional, a report identifying the medication, dosage, the date
27 the medication was prescribed, the Respondent's prognosis, the date the medication will no
28 longer be required, and the effect on the recovery plan, if appropriate.

1 Respondent shall identify for the Board a single physician, nurse practitioner or physician
2 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
3 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
4 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
5 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
6 considered addictive have been prescribed, the report shall identify a program for the time limited
7 use of any such substances.

8 The Board may require the single coordinating physician, nurse practitioner, or physician
9 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
10 medicine.

11 **17. Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
12 random, biological fluid testing or a drug screening program which the Board approves. The
13 length of time and frequency will be subject to approval by the Board. Respondent is responsible
14 for keeping the Board informed of Respondent's current telephone number at all times.
15 Respondent shall also ensure that messages may be left at the telephone number when she is not
16 available and ensure that reports are submitted directly by the testing agency to the Board, as
17 directed. Any confirmed positive finding shall be reported immediately to the Board by the
18 program and Respondent shall be considered in violation of probation.

19 In addition, Respondent, at any time during the period of probation, shall fully cooperate
20 with the Board or any of its representatives, and shall, when requested, submit to such tests and
21 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
22 hypnotics, dangerous drugs, or other controlled substances.

23 If Respondent has a positive drug screen for any substance not legally authorized and not
24 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
25 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
26 practice pending the final decision on the petition to revoke probation or the accusation. This
27 period of suspension will not apply to the reduction of this probationary time period.

28 ///

1 If Respondent fails to participate in a random, biological fluid testing or drug screening
2 program within the specified time frame, Respondent shall immediately cease practice and shall
3 not resume practice until notified by the Board. After taking into account documented evidence
4 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
5 suspend Respondent from practice pending the final decision on the petition to revoke probation
6 or the accusation. This period of suspension will not apply to the reduction of this probationary
7 time period.

8 **18. Mental Health Examination.** Respondent shall, within 45 days of the effective date
9 of this Decision, have a mental health examination including psychological testing as appropriate
10 to determine her capability to perform the duties of a registered nurse. The examination will be
11 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
12 the Board. The examining mental health practitioner will submit a written report of that
13 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
14 Recommendations for treatment, therapy or counseling made as a result of the mental health
15 examination will be instituted and followed by Respondent.

16 If Respondent is determined to be unable to practice safely as a registered nurse, the
17 licensed mental health care practitioner making this determination shall immediately notify the
18 Board and Respondent by telephone, and the Board shall request that the Attorney General's
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
20 practice and may not resume practice until notified by the Board. During this period of
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board
22 is required, until the Board has notified Respondent that a mental health determination permits
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this
24 probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within the 45-day
26 requirement, Respondent shall immediately cease practice and shall not resume practice until
27 notified by the Board. This period of suspension will not apply to the reduction of this
28 probationary time period. The Board may waive or postpone this suspension only if significant,

documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 12/21/2011

Tamara Rae Harry
TAMARA RAE HARRY
aka TAMARA RAE WAGEMAN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 12/21/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Amanda Dodds

AMANDA DODDS
Senior Legal Analyst
Attorneys for Complainant

SD2011801000

Exhibit A

Accusation No. 2012-154

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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
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Attorneys for Complainant
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-154**

13 **TAMARA RAE HARRY**
14 **aka TAMARA RAE WAGEMAN**
15 **837 Sunset Drive**
Vista, CA 92081

A C C U S A T I O N

16 **Registered Nurse License No. 414985**

17 **Respondent.**

18
19 **Complainant alleges:**

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 31, 1987, the Board of Registered Nursing issued Registered
25 Nurse License Number 414985 to Tamara Rae Harry, also known as Tamara Rae Wageman
26 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
27 the charges brought herein and will expire on February 28, 2013, unless renewed.

28 **///**

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

12

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16

17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
22 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
23 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(June 7, 2011 Criminal Conviction for DUI With Bodily Injury on April 4, 2011)

14. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about June 7, 2011, in a criminal proceeding entitled *People of the State of California v. Tamara Rae Harry*, in San Diego County Superior Court, case number CN291220, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23153, subdivision (a), driving under the influence of alcohol and causing bodily injury to another, a misdemeanor reduced from a felony pursuant to Penal Code section 17, subdivision (b)(4). Respondent admitted, and the court found true the enhancement that Respondent's blood alcohol concentration (BAC) was 0.15 percent or more within the meaning of Vehicle Code section 23578. An additional count of violating Vehicle Code section 23153, subdivision (b), driving with a BAC of 0.08 percent or more and causing bodily injury, was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about June 7, 2011, Respondent was sentenced to five years summary probation, and ordered to complete 13 days in the Public Service Program, with credit for two days. Respondent was further ordered to complete a First Conviction Program, attend a MADD victim impact panel, pay \$2,000 in fees, fines, and restitution, and comply with the terms of standard DUI probation.

c. The facts that led to the conviction are that on or about the evening of April 4, 2011, a witness followed Respondent's vehicle as it weaved in and out of its lane. Shortly after the witness called the Carlsbad Police Department, Respondent "rear-ended" another vehicle that was waiting at a red light at an intersection, causing injuries to the driver. When the patrol officer arrived, he observed Respondent walking in the roadway. Upon contact with Respondent, he immediately smelled the odor of an alcoholic beverage on her breath, her eyes were watery and bloodshot, and she was having problems maintaining her balance. Respondent stated she had not

1 been drinking. Respondent completed only three field sobriety tests before the officer concluded
2 she had been driving under the influence of alcohol and caused a traffic collision. Respondent
3 was arrested and booked; she provided a blood sample that was analyzed with a BAC of .23
4 percent.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

7 15. Respondent has subjected her registered nurse license to disciplinary action under
8 section 2762, subdivision (b) of the Code in that on or about April 4, 2011, as described in
9 paragraph 14, above, Respondent used alcoholic beverages to an extent or in a manner that was
10 dangerous and injurious to herself, and to others in that she operated a motor vehicle with an
11 excessively high BAC and caused a collision resulting in injuries.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Conviction of an Alcohol-Related Criminal Offense)**

14 16. Respondent has subjected her registered nurse license to disciplinary action under
15 section 2762, subdivision (c) of the Code in that on or about June 7, 2011, as described in
16 paragraph 14, above, Respondent was convicted of a criminal offense involving the consumption
17 and/or self-administration of alcohol.

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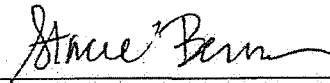
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 414985, issued to Tamara Rae Harry, also known as Tamara Rae Wageman;
2. Ordering Tamara Rae Harry to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: September 9, 2011


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2011801000